



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 9, 1998

Mr. Helmut Talton
Associate General Counsel
Dewitt C. Greer State Highway
126 E. 11th Street
Austin, Texas 78701

OR98-2638

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#119389.

The Texas Department of Transportation (the "department") received an open records request for records pertaining to the timing, sequencing, and general operation of traffic signal lights at a particular intersection. You contend that the requested records, a representative sample of which you have submitted to this office for review, are excepted from required public disclosure under section 552.103 of the Government Code because the records "relate" to reasonably anticipated litigation to which the department may become a party.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You have submitted to this office for our review a notice of claim letter that the department received from an attorney in connection with a fatal automobile accident that occurred at the referenced intersection. Under Open Records Decision No. 638 (1996), this office determined how a governmental body must establish reasonably anticipated litigation when relying solely on a claim letter. We stated that the governmental body must 1) show that it has received a claim letter from an allegedly injured party or his attorney and 2) state that the letter complies with the notice of claim provisions of the Texas Tort Claims Act or applicable municipal statute or ordinance.

In this instance you have made the representation that the notice letter complies with the requirements of the Texas Tort Claims Act. We therefore conclude that you have met your burden of showing that litigation is reasonably anticipated and that the requested records "relate" to the anticipated litigation. The department therefore may withhold this information pursuant to section 552.103(a).¹

We assume, however, that none of the records at issue have previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/mjc

Ref.: ID# 119389

Enclosures: Submitted documents

¹In reaching our conclusion here, we assume that the "representative sample" of the employee records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Mr. Mike C. Andrews P.H.D.
Complete Accident Reconstruction Inc.
3904 Marlow Lane
Richardson, Texas 75082
(w/o enclosures)